



DEFENCES

FOR

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AGAINST

The Libel of Separation and Aliment at
the Instance of Mrs. *Eleonora Cathcart*.





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THE Subject of the present Action is of all Things the most interesting. It is the Defender's Wife, his other self; a perpetual Separation, founded upon a supposed fixed barbarous Resolution to destroy her, inferred from a Train of Circumstances, supposed to have happened during the Course of upwards of two Years, all tending to prove the Defender divested of his Understanding and Reason, of all Virtue and Honour. So the bringing the Defender under the cruel Necessity, either of giving up his Wife, himself, and every thing that is valuable to a Man, or, on the other hand, to expose the Misfortunes of his Family to the World, that ought to have been condemned to perpetual Darkness; and to be forced to be the Accuser of his Wife, whom he is in Duty bound to protect against all the World, is a Distress to be felt, but not expressed. At the same time, it is a Distress brought upon the Defender by this Action; it is the Welcome he hath received from his Wife and her Advisers, upon his Return to his native Country, after a four Years Absence, without any other View, but the poor Prospect of drawing

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a little Money from the Defender, and which he would chearfully submit to, could it be parted with by itself: But, as that is not the Case, his Honour and his Reputation are at Stake; the Law of Self-preservation brings him under the undesirable Necessity of standing upon his Defence.

The Defender is so sensible of the Uprightness of his own Intentions, and the Inoffensiveness of his Behaviour towards the Pursuer and her Friends, that he could almost be tempted to rest his Defence upon a Denial of the Facts charged in the Libel. He cannot think, that any credible Witness can be found who will swear to the Defender's being guilty of any Breach of Duty against his Wife. But, as the Libel hath been printed, and dispersed through the World, and this may of itself be sufficient, though not to affect the Defender in this Court, yet to rob him of his Reputation in the World, Sir *John* finds himself under a Necessity of entering into a more particular Explication of his own and the Pursuer's Conduct, and which he offers to prove, in his own Vindication.

And in the *first* place, he must observe, That, after he had made his Addresses to the Pursuer in an honourable Way, and with some Prospect of Success both from the Pursuer and her Relations; he unluckily discovered, that he had contracted a Disease most distressing to himself, and at the same time such as rendered Marriage absolutely improper. This unexpected Discovery the Defender considered to be too important to the Pursuer to be concealed from her; and he immediately imparted the same to her Relations, that she, by their Advice, might take such Resolutions as should be thought proper, either to break off the intended Match altogether, or to delay it till the Event of his Cure.

As the Pursuer and her Relations did not chuse to break off the Match, and as the Defender was advised by his Physicians, that it was necessary that he should repair to a warmer Climate, in order to an effectual Cure; the Defender proposed and earnestly pressed, that the Marriage should be delayed until his Return. But the Pursuer and her Friends, though they agreed to the Journey, yet they insisted,

insisted, and at length prevailed upon the Defender to agree, that the Marriage should be solemnized before he set out for foreign Parts.

When this was settled, as a Consequence, a Contract of Marriage was proposed: And as the Defender had no Knowledge in such Matters, and had no Jealousy of the Pursuer's Friends, who appeared so forward to have him for their Ally at any rate, he trusted them absolutely with the framing of the Contract, without calling to his Assistance any other Lawyer on his part. Though he was informed of the Extent of the Pursuer's Portion, yet he gave himself no Trouble to inquire in what manner it was secured to her; nor was he advised in what manner her Portion was to be disposed of. All that was left to the Disposal of the Pursuer's Friends. He signed two Duplicates of the Contract of Marriage with an implicit Faith, as they were prepared by them; and he left both Duplicates in their Possession, as well as the Securities for his Wife's Fortune. And it was owing to mere Accident, that the Defender's whole Estate was not left under the Power of the Pursuer's Friends, during his Absence from *Scotland*: For a Commission was prepared for the Defender's Subscription, giving such Powers to a Person to be named by them; and was presented to him to be signed just as he was ready to take the Journey; and which he declined to execute, because it appeared to the Defender unnecessary to appoint a Factor for receiving his Pay, or the Interest of his Wife's Portion.

It was a Consequence of the Marriage-solemnity, that the Pursuer insisted to travel beyond Seas along with the Defender, now become her Husband, to be assisting, as was pretended, in his Cure; and as he could refuse nothing to the Pursuer and her Friends, he at last unwillingly consented, and they took their Journey from *Edinburgh* in the End of *February* 1744; the Defender, upon their Suggestion, having desired, and prevailed on Miss *Cathcart*, the Pursuer's Sister, to accompany her in her Journey.

Before they had got half Way on their Journey to *London*, the Pursuer, all of a sudden, and without any Cause or Occasion that she

she hath hitherto thought fit to assign, turned sullen, and affected Silence and Melancholy while she was in Company, and fell a scolding, upbraiding, and threatening the Defender when they were alone, to the Disturbance of his Quiet both by Night and Day; and, in his then sick and weakly Condition, to the increasing of his Disease, and Danger of his Life.

This Usage was continued during the Residue of the Journey to *London*, and from thence to *Falmouth*, whereby Sir *John's* Disease was so far increased, that his Life was despaired of; but without any Resentment or Retaliation on the Defender's Part, other than expostulating with the Pursuer in Presence of her own Sister, and Companion in the Journey; but without any Success. The Pursuer continued her Rage and Insults upon the Defender during the whole Voyage from *Falmouth* to *Lisbon*, except during some short Intervals that she seemed, or at least pretended to seem sensible of the Injuries she had done to the Defender, to ask Forgiveness, and to vow and swear Amendment. But those Calms were constantly succeeded by violent Storms of Rage and Fury, as if the Pursuer had lost her Reason and Understanding, as well as all Regard and Respect to her Husband, or that her Passions of one sort or other had got the better of all.

Soon after their Arrival at *Lisbon*, the Pursuer renewed her extravagant Behaviour; and, in order to bring the greater Distress upon the Defender, she threatened first to return home and expose her Husband; and, when he bore this patiently, she declared it was her Resolution to make it her Study to plague him in every Shape as much as she could: And, in prosecution of this Declaration, she threatened to put an End to her own Life; first by Abstinence from Food, in which she continued obstinately, so far as appeared to the Defender, for two Days; and then she swore, that as that Way of dying was too slow, she would cut her own Throat, jump the Window, or strangle herself; and, at the same time, pretended, that these desperate Resolutions were the Consequences of nameless fictitious Injuries committed by the Defender: And upon finding that she found no Credit with any body in those Fictions,

Fictions, she confessed, that her Behaviour was a Contrivance to obtain such Evidences of her Husband's Affection as were not proper in his then Circumstances to be given; and thereupon renewed her Professions of Repentance, and Promises and Vows of Amendment.

Those Incidents, so distressing to the Defender, were no proper Means for advancing his Cure, the sole Intention of his Expedition to *Lisbon*; yet the Defender, though he had neither any Prospect of Quiet while the Pursuer continued in her unevenly Disposition, nor of completing his Cure under such Disturbances, he proposed that the Pursuer either should continue at *Lisbon* till he should recover his Health, or that she would propose any other Plan that might give Ease and Contentment to both. But she would do nothing to deliver him from his Disquiet: On the contrary, she seemed to watch all Opportunities of distressing him in the most sensible Manner; when he happened to be seized with a Fit of Sickness, she raved and swore; if he was in a Hurry preparing for a Journey, or upon any other Occasion, then she endeavoured to put all Things to Confusion, and to provoke the Defender, and distress him the most with her bad Humour.

From *Lisbon* the Defender and Pursuer set out for *Italy*, and they arrived there in the End of *July* 1744: And while they lodged at *Pisa* in a publick House, the Pursuer observing the Defender distressed with Sickness, and fatigued with ordering Matters for their Departure for a Country-house he had hired at *Calci*, in the Neighbourhood of *Pisa*; she set up a scolding against the Defender; and he having earnestly begged a little Quiet, she got up, swore and cursed, threw the Knives, Forks and Salts over the Table; and upon Miss *Catbcart's* interposing, in respect of the Publickness of the Place, she thereupon ordered her Sister to be gone, and immediately flung after her, and beat her unmercifully after she had got her down; and the Defender having interposed, she left her Sister, clinched her Fist, and gave the Defender a severe Blow on the Face; and the Defender having on that Occasion pushed the Pursuer from him, her Head struck against a Chair, which

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brought some Blood, which she showed to the Servants, to the great Disgrace of Sir *John* and his Family.

That, during their Residence at *Calci*, the Pursuer continued to execute her Plan of distressing the Defender. She complained of the Drudgery of the Charge of their Household-affairs, and wilfully allowed the Family-accompts to go into Confusion; and when, upon her Complaint, her Sister was willing to relieve her of this Trouble, this was also made a Ground of Accusation, that she was neglected, and had not the Trust of managing her own Family.

The Pursuer, in her raving Fits, sometimes insulted the Defender with the Fortune he had got with her; and at other times, that he had been duped: That though she had a Fortune of *L. 3000*, yet that really no Part of it was in his Power; that her Grandmother, a Lady of Spirit, had secured her, and her Independence upon her Husband: And, upon the Return of her Fits of Repentance, she assured the Defender of her Power and Influence over her Relations, that she could induce them to part with her Fortune to Sir *John*, by giving him Credit for the whole, so as to enable him to get it into his own Power, and his Possession; and in this View she pretended to write Letters to her Grandmother, accusing herself, and justifying the Defender, and insisting for a Credit to the Extent of her Fortune of *L. 2000*. These Things Sir *John* submitted to for Peace sake; though it now appears they were all a Piece of downright Dissimulation and Hypocrisy: For, by her own Averment in her Libel, while she wrote her self-denying Letters, shown to the Defender, and allowed of by him, she wrote the direct contrary, and sent both off at the same time to her Grandmother.

During the Winter 1744, the Pursuer, when the cold Season increased the Defender's Distress and Uneasiness, continued her Insults and Injuries against the Defender. If he answered, and reasoned with her, it increased her Rage and Ravings: If he was silent, it augmented her Fury, and she complained he did not mind her; but she would lead him a Dance, now that she had begun. But as the Defender still kept his Temper, she at length resolved

to leave him, and to return to *Scotland*; and she persisted in her Resolution, notwithstanding of the Defender's Remonstrances, in respect of the stormy Season of the Year, which rendered a Voyage of that Length dangerous and undesirable in the Winter-season.

She set out from *Leghorn* in *March* 1745. But before her Departure, she affected to be all Grief and Sorrow for her past Conduct; all Promises of Amendment in Time coming; and begged to have Sir *John's* Directions concerning his Affairs in *Scotland*; promising to execute his Commissions with the greatest Zeal and Pleasure: And which Professions she repeated in all her Letters after she left the Defender.

The Defender was willing to give Credit to her Professions; and gave her particular Directions concerning his Estate real and personal, and with respect to her Return, and the Settlement of their Family at *Montauban* in *France*, where he proposed to meet her: And particularly, so far was he convinced of her Sincerity, and such was his Confidence in the Friendship of her Relations, that he sent her full Powers over his Estate, and referred her to her own Relations only for their Advice in her Management.

During the Pursuer's Stay in *Scotland*, the Defender lived at *Naples* in great Quiet and Tranquillity. And, in so far as appeared from the Pursuer's Letters during that Period, she preserved the Calmness of Temper that she professed at parting. But, upon her Return to *Naples*, in the End of *February* 1746, in Company with Mrs. *Stevenson*, the Defender found himself greatly disappointed. She appeared to have neglected all his Commissions, whether more important or trifling, particularly his Money-affairs: His Pay that she herself had ordered to be remitted to Captain *Wilson*, she did not mention to the Captain at her meeting with him at *London*; and said she had burnt all the Defender's Factor's Letters: She assumed the Air, that she thought the Defender's Affairs were below her Regard, and seemed surpris'd that the Defender should have expected any Account of these Matters from her; and insulted him with minding his Dog, and a Boy that she wrote she had hired for him.

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As at this Time Miss *Cathcart* was recalled by her Friends, and Mrs. *Stevenson* was to return with her, the Defender could not help being apprehensive of being left alone with the Pursuer, should she continue her usual Temper and Behaviour. And, in this View, as the Defender was advised to return to *Lisbon*, in hopes of completing his Cure, he insisted, that the Pursuer should take up House in *France*, with her Sister and Mrs. *Stevenson*, until her Relation, whom she made the Defender believe she had wrote for to *Scotland*, and whom she pretended to expect every Day, should arrive; and who, after the Defender's Return from *Lisbon*, might be Witness and Mediator between the Pursuer and Defender.

But this was not suitable to the Pursuer's Projects, and those of her Friends: They desired no other Witnesses but her own *Abigail*. However, to amuse and deceive the Defender, the Pursuer proposed to go into a Convent at *Thoulouse*, and to continue there until Sir *John*'s Return from *Lisbon*, or at least until the Pursuer should procure one of her Relations to come over to *France* to live in Family with her, and with the Defender upon his Return from *Lisbon*.

This Project of the Convent was not at all agreeable to the Defender, but was opposed with all his Interest: He considered it as indecent for his Wife, and dangerous to her Religion. But at length he was forced to yield to their Importunies; and he got her provided in the best and most creditable Convent of the Place, where the People of Quality were boarded: And after that, he set out with Miss *Cathcart*, and Mrs. *Stevenson*, for *Bordeaux*; and having waited there till he found a Passage for them to *Britain*, and for himself to *Lisbon*, which took up about two Months, then he went on in his intended Voyage for *Lisbon*; where he continued for six Months, but without any great Progress made in the Recovery of his Health, the Season being too far advanced before his Arrival.

In the Beginning of the Year 1747, the Defender returned to *Thoulouse*; where he found, that the Pursuer had left the Convent as soon as she had notice of the Defender's being arrived in *Portugal*; that her Pretences of bringing one of her Relations from *Scotland*,

land, was all Amusement ; that no such Thing was intended by the Pursuer, or to be expected. And, as the Pursuer then declared she resolved to rule at any rate, and resumed her declared Resolutions to plague him, it cannot be thought strange though he had but dismal Apprehensions of what was to follow ; especially that he found his Disease returning, which he thought increased by the Dampness of the Air of *Thoulouse*.

In this Distress, he took a Resolution to settle at *Montauban*, for the Benefit of the Air : And he being there advised to enter upon a Course of Mercury, as the last Chance that he had for his Recovery ; no sooner had the Mercury begun to work, whereby the Defender was confined to his Room, but the Pursuer, it now appears, resolved upon the Project that she is now carrying into Execution by this Action. For one Morning, being the 29th of *April*, when she was called upon to come up to Sir *John*'s Room to Breakfast, as usual, she at first refused ; and upon a second Message, she desired her Woman to tell the Defender she durst not come, and begged the Defender to forgive her ; and the Maid not being able to explain her Message, the Defender was confounded, and ventured out of his Room, in order to find out the Meaning of this strange Appearance. And as the Pursuer affected to put on an Appearance of being in a Fright, and to give Orders to her Maid in Confusion, in the Presence of the other Servants, and of her Chairmen, who were all in the Yard, Sir *John* endeavoured to persuade her to come in to the House, and, by the Assistance of her Maid, to carry her in to the House : But being unable to accomplish his Intention ; and as it rained, which made it to the last Degree dangerous for him in his then Circumstances to remain without, he returned to his Room, and she went off ; and, as the Defender is informed, pretended to every one she met with, that she was in danger of her Life from the Defender : And upon the same Pretence this present Action of Separation is grafted.

This being the Fact, the Abridgment of the Persecutions the Defender hath suffered from the Pursuer, and which he is able, and offers to prove by uncontested Evidence ; when he hath the

strongest Grounds of Complaint against the Pursuer, had not the Law supposed he had a Power to restrain her, and vested in him a proper Authority for that Purpose, if he had had a Heart capable to use it; it is submitted what must have been his Surprise, when, upon his Return to this Island, he found the Tables turned, and a Cry raised against him, as a violent and cruel Man, and from whom his Wife's Life was in Danger, though he was at many hundreds of Miles Distance, and scarce having any Intercourse with this Island; and that this Cry was founded upon in a Suit brought in this Court, seriously charging him with many childish Caprices, and outrageous Designs against the Life of a Lady, his own Wife. And however an Action for Aliment might be competent, if he had refused either to receive her into his Family, or, upon her Request, to furnish her what was necessary for her in this Country in a separate Family; yet, to be sure, an Action of Separation, upon Pretence of her Life's being in Danger, behoved to appear to the Court, and to the World, in their Circumstances, to be *felo de se*, and an Action inconsistent with the Circumstances of the Parties.

But, more particularly, in answer to so much of the Libel as is founded upon the Marriage-articles between the Pursuer and Defender; the Defender offers to prove, That those Articles were framed by the Pursuer's own Counsel, in whom, at the same time, the Defender believed he had the justest Reason to place entire Confidence. They are in the Possession of the Pursuer's Friends. And if in this respect the Defender's Conduct is blameable, it is not chargeable upon him, who hath no Knowledge of the Purport of those Articles, but what he hath received from the Pursuer, and her Doers: And if he hath any Jealousies or Suspicions of their past Conduct, it is justified by this present Action. And it will appear from the Proof to be brought, that it had its first Rise, not from the Defender's Temper, but from the Pursuer's Conduct.

And as to the Interview between the Defender and the Lord Cathcart, at London, in Spring 1744; the Defender cannot charge his Memory with any thing that occurred at that Time, that may be the Subject of an Accusation against him. He will appeal to that

that Noble Lord, with respect to the Circumstances of this Transaction, and with respect to the Pursuer's after Conduct, of which his Lordship was informed: And he has so great Confidence in the Noble Lord's Honour, that he will chearfully submit that his Cause be tried upon his Testimony, so far as the Facts fell under his Lordship's Observation, or his Lordship was informed by others.

And as to the Defender's Conduct at *Lisbon*; the Defender's Distresses in that Place from the Pursuer have been fairly, but imperfectly stated above. They will come out upon Proof in a stronger Manner: And if so, it will not be credited that at that Time he was comforting himself with accusing the Pursuer's Relations who were in their Grave.

The Adventure at *Pisa* hath been explained according to Truth in the Narrative; and the quaint Conversations that in the Libel are charged on the Defender upon that Occasion, as they are mere Fictions, so they are unsuitable to the Sensations that became both the Pursuer and Defender upon so unnatural and melancholy an Occasion.

And as to the Objections to the Family-æconomy at *Calci*, they have been explained above: But, at the same time, they appear to be below the Solemnity of this Action, and show the Littleness of the Pursuer's Notion of an Action of Separation.

The Pursuer's Letters touching Alterations in the Marriage-articles, as they were a Project of her own, so they demonstrate the Inconsistency of her Conduct, as well as of the present Libel, and show an Artifice below the Sincerity that ought to govern human Actions, and an intended Trick upon the Defender her Husband's Judgment.

And as to the History of my Lady's Treatment at *Leghorn* in the Winter 174 $\frac{4}{5}$, it is from first to last a Disguise of the Truth. The Fact is: Sir *John*'s Coach-horses were stoln, and before they were recovered, Sir *John* sold his Coach, as the Pursuer, for whose Use the Coach was kept, had resolved to leave *Italy*, and return to *Britain*; and during her Stay at *Leghorn*, the Defender provided her in a Chair constantly to attend her; and when the Horses were recovered,

recovered, they were immediately sold, as Sir *John* had then no Coach, and the Pursuer expected to set sail for *Britain* every Day; and if my Lady at any Time walked a Foot, it was voluntary and affected, as she at no Time wanted a Chair to carry her abroad. And the Circumstance with respect to refusing the Gown, is a downright Falshood.

And as to the Expence of the Lady's Journey to *Britain*, it is an artful Disguise. The Defender believes he had a Credit of *L. 100* from Sir *John Shaw*, as a Present to the Pursuer; and as the Pursuer took up the Resolution of, returning to *Scotland*, he gave her Credit for *L. 100*; and if this Credit was used by the Pursuer, by drawing upon Sir *John Shaw*, which the Defender does not know to be the Fact; yet sure it was no Crime in the Defender, nor is it chargeable on him as an Offence, more than if she had taken the Sum from his Banker at *London*.

The Accusation against the Defender, of his affronting every body he had to deal with in *Italy*, and charging the Resentment of those Affronts against the Defender, is an Accusation so general, that the Defender neither can explain nor answer; but the Defender apprehends it is real Evidence, sufficient to disprove all the Circumstances of Maltreatment alledged against the Defender before the Pursuer's Return to *Scotland* in Spring 1745, that when the Pursuer was at perfect Liberty among her Friends in *Scotland* for near a Twelvemonth, she voluntarily returned to the Defender at *Naples*; a Thing absolutely inconsistent with the supposed harsh Treatment, and the pretended Danger of her Life arising therefrom, when she was formerly in *Italy*.

And as to the Circumstance of the Pursuer's Jewels; the Fact is, That as there was Danger of the transporting them by Sea in Time of War, Part of them were voluntarily and rationally left with Sir *John*; at the same time they were Jewels of the Defender's Family; and he believes, and is advised, that if she were to prevail in this Action, she has no Title to possess them: At the same time, he had no Thought either of demanding them, or a Subject of much greater Value, and to which, he is advised, he has undoubted Right,

Right, *viz.* Plate delivered to the Pursuer by the Defender's Mother at their Marriage, of considerable Value, and which the Pursuer still retains in her Possession. These Things the Defender is sensible are foreign to the present Argument; they are patrimonial Concerns, and triable in another Court, and they are improperly brought in to the present Action.

The Pursuer's Return to *Italy* was the Effect of her repeated Desires and Intreaties. The Defender was willing to expect the best; and though he was greatly disappointed, he bore all with Patience: And though, from past Experience of the Pursuer's Arts to find Occasion against her Husband, he insisted for some Relation of her own, and of her Choice, to be the impartial and unsuspected Witness of their Conduct; this was a determined Resolution of the Defender, and which he pursued with Steadiness for a great while, and the Pursuer as constantly disappointed: yet this is so far from being Evidence, that the Defender was disposed to hurt the Pursuer, that it is a real Evidence of the contrary; and that the Pursuer intended to take Occasion against the Defender, and to deprive him of the proper Evidence in his own Justification. And the Story of the Convent was but a Part of the Pursuer's Plan to supersede the Defender's Demand of having the Presence of one of the Pursuer's Friends. And the Objections made to the Convent, do not apply to that which Sir *John* had procured for her, but to the other Convent which she herself afterwards chose, by the Advice of the *Irish* Priest *Denny*, her Confident.

And as to the Circumstance of the Pursuer's Journey from *Thoulouse* to *Montauban*, the Fact is: That the Defender went before, to provide a House at *Montauban* for him and the Pursuer; that he provided the best Chaise the Place could afford, for the Pursuer and her Maid to follow some Days after, and a Waggon after all to carry the Baggage: That it may possibly be true, that the Pursuer, in prosecution of her Plan to disgrace her Husband, and to found this present Action, brought Part of the Baggage along with herself, contrary to the Defender's Directions, and without any Necessity; and if so, her overloading the Chaise with Luggage, and with her

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Sister Miss *Catbcart's* Monkey, with the *Canary* Bird and the Pointer, is not chargeable upon the Defender, but upon the Pursuer herself; and must be considered as a Prologue to her Elopement, that happened some time after, without any Cause or Occasion.

And as to the History of Sir *John's* Scheme of a Husband's Right to beat his Wife, and of the dismissing the Cook-maid, and her hiring a Man-cook; it is a mere Fiction from first to last. Sir *John* never thought, much less did he declare his Opinion, that a Woman was to be beat by a Man, or by her Husband. He hired a Man-cook within two or three Days after their Arrival at *Montauban*; and he was dismissed upon the Complaint of Mrs. *Jolly*, the Pursuer's Woman, who came running up Stairs to Sir *John*, crying, that the Cook was threatening to stab her: And another Man-cook was immediately hired. As Sir *John* was then confined to his Room under Mercury, upon that Occasion he was insulted by the Pursuer in his Distress; and she made her Elopement, and pretended to be apprehensive of a Pursuit by the Defender, when she knew he was confined to his Room, and often to his Bed, and could not venture without Doors, without certain Danger of his Life. This is Demonstration, that the Danger of her Life, the pretended Cause of her Elopement, was mere Affectation; and that this Action, founded thereon, is equally groundless and affected.

And, *lastly*, As to the Suggestion of the Defender's calling for and burning his Letters to the Pursuer, it is a groundless and false Allegation: And Sir *John* has Reason to believe, that they are still extant; and that this is thrown out to excuse their not being produced, as they would disprove what is material in the Pursuer's Libel.

In respect whereof, 11 JU 62 &c.

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